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WILKINSON, BARKER, KNAUER & QUINN

LAW OFFICES
1735 NEW YORK AVENUE, N. W.
WASHINGTON, D. C. 20006-5289
(202) 783-4141

TELECOPIER
(202) 783-5851
(202) 833-2360

GERMAN OFFICE
GOETHESTRASSE 23
60313 FRANKFURT, GERMANY
011-49-69-20876
011-49-69-297-8453 (TELECOPIER)

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Mr. William F. Caton
Acting Secretary
Federal Communications Commissions
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: ET Docket No. 94-45

Dear Mr. Caton:

Enclosed please find an original and nine copies of the Comments of the Computer and Business Equipment Manufacturers Association in the above-referenced docket.

Should there be any questions regarding this filing, please contact the undersigned.

Sincerely,

WILKINSON, BARKER, KNAUER & QUINN

Lawrence J. Movshin

By: Lawrence J. Movshin KAB

Enclosures
cc: (w/encls.)
Richard M. Smith
Dr. Thomas P. Stanley
Richard B. Engelman
John A. Reed
Julius Knapp
Charles Cobbs

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	ET Docket No. 94-45
Revision of Part 2 of the Commission's Rules Relating to the Marketing and Authorization of Radio Frequency Devices	)	RM-8125

COMMENTS

The Computer and Business Equipment Manufacturers Association ("CBEMA"),[1] respectfully submits the following Comments in response to the Commission's Notice of Proposed Rulemaking (FCC 94-110, released June 9, 1994) in the above-captioned proceeding. As discussed below, with a few exceptions, CBEMA supports the Commission's proposals, which are intended to harmonize and clarify the Commission's Rules relating to marketing and equipment authorization of radio frequency devices.

First, CBEMA supports the effort to combine and simplify the marketing rules as they relate to all types of unintentional radiators. CBEMA was the primary proponent of relaxing these rules as they related to computing devices, to more closely align them with the computer industry's standard marketing practices without creating significant risks of harmful interference to other radio frequency devices.

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[1] CBEMA is a leading trade association of manufacturers and vendors of computers, computing devices, office equipment and information services. For more than fifteen years, the association and its member companies have been active participants in the activities of the Commission and the national standards making associations involved in the development of limits and methods for measuring radio frequency emissions from computing devices. As one of the initial proponents of rule changes designed to accommodate the marketing practices of the computer industry, CBEMA has a substantial interest in this proceeding.

The myriad of rules and exceptions to rules within Subpart J of Section 2 has been the source of some confusion. Consistent with the Commission's efforts in Docket 89-389 to simplify Part 15 to treat all types of unintentional radiators equally, this effort to harmonize the impact of the so-called marketing rules to treat all unintentional radiators equally should be confirmed.

However, some of the proposals should be clarified in the rules that are finally adopted. For example, proposed Section 2.803, which relates to the marketing of radio frequency devices prior to equipment authorization, states that a radio frequency device may be advertised or displayed (Section 2.803(c)) or operated for certain purposes, but not marketed (Section 2.803(e)) prior to equipment authorization or, for devices not subject to equipment authorization, prior to a determination of compliance with applicable technical requirements, as long as there is a conspicuous notice stating that the device has not been authorized, and is not, and may not be, offered for sale or lease, or sold or leased, "*until authorization is obtained.*" Section 2.803(c). However, because verification is not properly described as being "obtained," the proposed language does not fit the circumstances of equipment being advertised, displayed or operated in advance of verification. Accordingly, the rule should be clarified, perhaps by adding the phrase "or compliance established, as required by the applicable requirements."

Proposed Section 2.803(e) seeks to extend provisions now found in Section 2.806 dealing with so-called "beta testing" of devices before they are tested, in order to allow manufacturers to determine customer acceptability. This exception has been particularly important to the computer industry, which is typically interested in customized problem solving, and which requires customer interaction with devices

during the design and developmental stages to assure that the design of the device, integrating hardware, firmware and software, will indeed meet customers' needs. However, fearing that expanding this exception could become a loophole in the rules, allowing for the manufacture and distribution of a large quantity of untested or non-compliant devices, the agency has proposed to limit this relief as it is now limited for computing devices subject to verification. To that end, the operation of such devices outside of a manufacturer's premises will only be permitted when product performance and customer acceptability determinations cannot be made at the manufacturer's facilities because of the "size or unique capability of the device," and only provided that the device is not operated "at a residential site."

The Commission initially adopted this provision and proposes it here "because of the possibility that a large quantity of untested and potentially noncompliant equipment could end up in the hands of the general public."[2] But CBEMA's members' experience suggests that the size/unique capability limitation is often hard to apply, particularly given that so many newer devices can reasonably be deemed to possess unique capabilities that require consumer interaction to prove viable and acceptable. Indeed, because limits on operation based on size or unique capability will necessarily be subject to varying interpretations, they are likely to be ineffective in limiting the operation of large numbers of potentially harmful non-compliant devices.

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[2] Notice of Proposed Rulemaking at ¶ 10.

Similarly, defining "residential sites" may prove difficult, particularly in an age of telecommuting, as more businesses co-locate in homes.[3] As a result, the dividing line between business and residential "sites" is blurred and may no longer be a practical divider for the Commission to use for the purpose of marketing rules for radio frequency devices. In lieu of such subjective analyses, CBEMA believes that strict numerical limits on the number of devices that can be utilized for such tests, with specific reporting requirements designed to assure that manufacturers know where such devices are being utilized, should instead be adopted.[4]

In this regard, CBEMA urges the Commission to clarify the parenthetical phrase "not to the general public" used in describing the methods by which pre-production announcements may be made to business or commercial users. It is assumed that the phrase was intended to describe the announcements, and not the periodical used to make them. For example, announcements of new medical and/or business products are often carried by advertisements in, or as a result of news

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[3] Current technology allows many business activities, such as word processing, facsimile services, computer aided design, order processing, and other telecommuting activities, to take place in the home, and numerous types of technology will be available in residential homes in the near future, including digital television, interactive cable television services, and the "information superhighway." Also, residential construction in densely populated urban areas frequently places residential buildings in close proximity with commercial activities.

[4] It is noteworthy that in dealing with a similar concern, the importation of devices for determining compliance, the Commission settled on a numerical limit high enough to provide a reasonable sample of a device's capabilities, but low enough to assure that manufacturers would retain "control" of such non-tested devices. See, e.g., Amendment of Part 2 of the Rules Concerning the Importation of Radio Frequency Devices, Order on Reconsideration, 7 FCC Rcd. 4960 (1992); see also 47 C.F.R. § 2.1204(a). A similar limit, e.g. 200 units, can be adopted for the purposes of Section 2.803 as well.

releases to, such widely read media as the Wall Street Journal or Business Week, or even more common periodicals like the New York Times and Newsweek. Nevertheless, the announcements are clearly aimed and focused at the business, commercial or medical users. Given that the Commission has always considered the target market as the determinative factor in classifying devices as Class A or B, CBEMA urges that this parenthetical reference to "not to the general public" be clarified to similarly refer to the target of the announcement and not to the media in which it is made.

CBEMA supports the changes to the equipment authorization rules, with two exceptions. First, changes to Section 2.955 would add detailed provisions dealing with the retention of records by the responsible party for each equipment subject to verification. But the Commission has also revised the preamble of Section 2.938 so that it no longer appears to apply only to "equipment for which an equipment authorization has been issued" to make it apply now to "each equipment subject to the Commission's standards" -- thereby arguably including devices subject to verification under both sections. CBEMA urges the Commission to revise the preamble to Section 2.938 so that it does not cover verified devices, which are covered under Section 2.955, or to combine the sections to cover all devices subject to the Commission's standards.

CBEMA also urges rejection of the requirement that a party other than the grantee who modifies a device must include new labelling not only with that party's FCC identifier, but also with the name, address and telephone number of that party. CBEMA agrees with the concept of holding a party who has modified a device without the grantee's approval liable for the device's performance, by making such

party the "responsible party" upon making any such changes. CBEMA also supports requiring that some identification of the new "responsible party" be placed on the device; either such party's FCC identifier or some other method of assuring that the party making the last modifications can be identified. But the proposed added identification burdens, i.e., that party's name, address and telephone number, are not consistent with the FCC identification program, which otherwise does not require any particular nomenclature on a device other than an FCC identifier. Absent some compelling reason for requiring the name of a modifier when it is not required for the grantee or manufacturer, this detailed level of identification should not be mandated in each case.

By the same token, CBEMA also submits that Section 2.938 should be clarified to create more reasonable burdens on a modifying entity. As proposed, the rule requires "the responsible party" to maintain "[a] record of the original design drawings and specifications and all changes that have been made . . . ." However, in those instances when the responsible party is one who has modified the equipment other than the grantee (or the manufacturer or importer in the case of verification), the rule could be read to require the modifying entity to obtain the original drawings from the grantee, and the grantee to turn over the drawings. CBEMA submits that neither burden is appropriate. Rather, the rule should be revised so that when the responsible party is someone who has made modifications other than the grantee (or manufacturer or importer), that party is only required to maintain a record of the original design drawings and specifications relating to the modifications it has made.

CBEMA is quite sensitive to the problems associated with the modification of devices by parties other than the grantee, an offshoot of the development of systems integrators and "retail" systems manufacturers who now develop customized computers for consumers from non-approved subassemblies and/or certified peripherals. CBEMA has developed and proposed to the Chief Engineer a "declaration" process to replace the current equipment authorization for computing devices, by which manufacturers would be responsible for testing and determining the compliance of computer systems, and then including a declaration of compliance with each device sold, which would certify as to the product covered, the test procedure utilized, and a responsible party for compliance. While CBEMA supports the changes proposed herein, it urges expeditious consideration of this "declaration" process as a substantial improvement over the current equipment authorization procedures for computing devices.

CONCLUSION

The changes and clarifications suggested by CBEMA will further the Commission's efforts to harmonize and clarify the rules relating to marketing and equipment authorization of radio frequency devices. Accordingly, CBEMA submits that the Commission should adopt the rules proposed in the Notice of Proposed Rulemaking with the changes and clarifications proposed in these Comments.

Respectfully submitted,

COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

By: Lawrence J. Movshin
Lawrence J. Movshin

Wilkinson, Barker, Knauer & Quinn
1735 New York Ave., N.W.
Washington, D.C. 20006

Its Attorneys

September 6, 1994